

1982 WL 189489 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 18, 1982

*1 Robert E. Courtney
Director
Orangeburg-Calhoun Regional Detention Center
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Orangeburg, South Carolina 29116-1432

Dear Mr. Courtney:

Your letter to Mr. McLeod dated November 3, 1982, has been referred to me for reply.

You posed two questions. Initially, you stated that it was your practice to hold DUI arrestees in custody for at least four hours prior to release. Given that practice, you inquired:

1. Could an arrestee with a Breathalyzer reading in excess of .10 be released immediately and, if so, who would be responsible for his safety and the safety of others who might come in contact with him?
2. If a law enforcement agency wished to book and immediately release a DUI arrestee, could it simply write a uniform traffic ticket for DUI, give the arrestee his copy and send him home with a responsible person?

Regarding the issue of immediate release contained in both of your questions, that decision would, in the absence of a court order of release, rest with the discretion of the law enforcement custodian, as set forth in detail below. Regarding the issuance of a uniform traffic ticket, an arrest warrant would be required if the arresting officer did not witness the DUI and, at trial, the prosecution intended to introduce Breathalyzer or other evidence procured as a result of the arrest.

It appears that the four-hour rule has been widely used, with some exceptions, throughout the State since at least the early 1970's. It was developed as a general rule of thumb for law enforcement officers to assure that an arrestee would not be released while still intoxicated and, presumably, still a danger to himself or others.

The use of the four-hour (or other reasonable time) rule has long been viewed by this office as a reasonable exercise of custodial authority. However, it has no basis in statute or case law.

Generally, an arrestee in a DUI case has the same right to release as any other non-capital felony or misdemeanor arrestee. He is entitled to release on reasonable bond, within a reasonable time—or immediately when such release is ordered by a court of competent jurisdiction. Absent such an order, a jailer would be within his rights to refuse to release an arrestee on bond or bail, even to a sober person, until the arrestee was in a condition to provide for his own safety.

It is the wide-spread practice to release a traffic offender, including DUI, upon posting of bail or bond, either at a detention center or, for a relatively minor offense such as speeding, with the arresting officer. Our Supreme Court has impliedly recognized this practice. It is a favor to the arrestee, but there is no affirmative legal duty on a law enforcement agency to release without a court order.

Thus, there is no prescribed rule and nothing to preclude immediate release, as suggested in the questions you raised. The decision to release would vary with the individual and the incident. Factors such as intoxication of the arrestee, reliability of

individuals who would take responsibility for him, as well as directions of the magistrate setting bail should be considered. Under [Section 17-15-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, the magistrate need not release an individual on bond if, within his discretion, it is determined that the individual would be an unreasonable danger to the community (e.g., an intoxicated driver).

*2 It should be noted that in at least one incident law enforcement individuals were held civilly liable, where a DUI arrestee was released while still intoxicated and caused injury.

Finally, the issuance of a uniform traffic ticket vests jurisdiction in the court for a DUI. It has been held that a ticket could be issued by an officer who did not witness the commission of the DUI, and the court would properly obtain jurisdiction over the defendant. [State v. Biehl](#), 246 S.E.2d 859 (S.C. 1978). But in that case, no evidence obtained as a result of the arrest, such as the Breathalyzer test result, was used at trial. Therefore, the implication of [Biehl](#) is that an arrest warrant would be necessary, where the arresting officer did not witness the commission of the DUI and the State intended to introduce at trial the results of a Breathalyzer test or other evidence procured as a result of the arrest.

I hope this information has answered the questions you posed. If any further information is needed, please do not hesitate to contact me.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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